



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

Paper No.

Kenneth L. Cage, Esquire
McDERMOTT, WILL & EMERY
600 13th Street, N.W.
Washington, DC 20005-3096

COPY MAILED

JUL 29 2005

OFFICE OF PETITIONS

In re Application of :
Hiroyuki Okada : DECISION ON
Application No. 10/647,453 : PETITION
Filed: August 26, 2003 :
Attorney Docket No. 44319-069 :

This is in response to the "RESPONSE TO NOTICE OF OMITTED ITEMS IN A NONPROVISIONAL APPLICATION," filed May 8, 2005. Petitioner requests that the Office accord the above-identified application a filing date of August 26, 2003, with pages 27, 28 and 29 of the specification as a part of the original application disclosure.

Application papers in the above-identified application were filed on August 26, 2003. However, on March 21, 2005, the Initial Patent Examination Division mailed applicant a "Notice of Omitted Item(s) in a Nonprovisional Application," notifying applicant that the application papers had been accorded a filing date; however, pages 27, 28, and 29 of the specification appeared to have been omitted.

In response, applicant timely filed the instant petition (and petition fee). Petitioner asserts that pages 27, 28 and 29 were deposited with the Patent and Trademark Office with the nonprovisional application papers on August 26, 2003, as evidenced by the attached copy of the stamped postcard. Petitioner submits copies of pages 27, 28 and 29 as originally filed.

A postcard receipt which itemizes and properly identifies the items which are being filed serves as prima facie evidence of receipt in the Office of all items listed thereon on the date stamped thereon by the Office. See MPEP 503. A review of petitioner's postcard receipt reveals that: 1) it was date stamped as received by hand delivery in the USPTO on August 26, 2003; 2) it specifically identifies the items being filed, including "126 pages of Specification" and 3) it lacks any annotation of nonreceipt of any item denoted on the postcard. Thus, petitioner has shown that the items denoted, including the 126 pages of specification, were filed on August 26, 2003.

The application papers already considered received in the Office on August 26, 2003, were reviewed along with the missing pages of specification submitted on petition. These papers together constitute the items described on the postcard receipt, including 126 pages of Specification. Petitioner has shown that pp. 27, 28, and 29 were among the items present in the application on the date of deposit and should be included in the original application disclosure.

Accordingly, the petition is GRANTED.

Given the basis for granting the petition, the petition fee is subject to refund. The fee, although authorized, will not be charged to the Deposit Account.

The application is being forwarded to the Office of Initial Patent Examination (OIPE) for:

- further processing with a filing date of August 26, 2003, using the application papers received in the Office and presently accorded that date; and pages 27, 28 and 29 of the specification resubmitted on petition filed May 9, 2005;

Applicant will receive appropriate notifications regarding the fees owed, if any, and other information in due course from OIPE.

Any questions regarding the withdrawn Notice mailed November 26, 2003 should be directed to OIPE. No such Notice appears to be of record in this application (Although it is of record that the Notice was withdrawn).

Telephone inquiries related to this decision should be directed to the undersigned at (571) 272-3219.

A handwritten signature in black ink, appearing to read "Nancy Johnson". The signature is stylized with a large, looping initial "N" and a cursive "Johnson".

Nancy Johnson
Senior Petitions Attorney
Office of Petitions